IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 17, 2006 Session

XL SPORTS, LTD v. JERRY LAWLER

Appeal from the Chancery Court for Shelby County
No. 00-0692-3 D.J. Alissandratos, Chancellor

No. M2006-00637-COA-R3-CV - Filed September 28, 2007

This appeal involves the enforceability of a defendant's agreement to pay a plaintiff's legal expenses incurred as a result of a contempt proceeding arising out of a discovery dispute. The litigants compromised the discovery dispute on the day of the hearing on the contempt petitions, and the Chancery Court for Shelby County entered an order approving the parties' agreement and dismissing the pending contempt petitions. Thereafter, the defendant objected to the reasonableness of the amount of the attorney's fees requested by the plaintiff and also asserted that he should not be required to abide by the agreement because this court had subsequently determined that the plaintiff's underlying complaint should be dismissed with prejudice. The trial court ordered the defendant to pay the plaintiff's lawyer $44,982.96, and the defendant has appealed. We have concluded that the contempt proceeding was separate from the underlying litigation and, therefore that the defendant remains liable on his agreement to pay the plaintiff's legal expenses related to the contempt petitions notwithstanding the eventual dismissal of the plaintiff's underlying lawsuit. We have also determined that the trial court erred by ordering the defendant to pay the attorney's fees directly to the plaintiff's lawyer rather than to the plaintiff itself.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed As Modified

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., joined. WILLIAM B. CAIN, J., not participating.

Leonard W. Yelsky, Cleveland, Ohio, and Joseph D. Barton, Millington, Tennessee, for the appellant, Jerry Lawler.

Larry E. Parrish, Memphis, Tennessee, for the appellee, XL Sports, Ltd.

OPINION

I.

Jerry Jarrett and Jerry "The King" Lawler owned a wrestling entertainment business called the United States Wrestling Association ("USWA") for twenty years. The business's profitability had declined over the years, and in the summer and fall of 1996, Larry Burton devised a scheme to

purchase the USWA and then resell it at a hefty profit. The "tangled course of dealings"[1] that ensued consisted of essentially three steps. The first step involved Mr. Lawler purchasing Mr. Jarrett's interest in the USWA for $250,000. The second step involved Mr. Lawler selling the USWA to Mr. Burton for $2,000,000. The third step involved Mr. Burton selling the USWA to Vince McMahon, the chief executive officer of the World Wrestling Federation, for between $6,000,000 and $8,000,000.[2]

To raise the funds to purchase the USWA from Mr. Lawler, Mr. Burton entered into a joint venture with Mark Selker. In return for Mr. Selker's agreement to pay one-half of the costs of acquiring the USWA from Mr. Lawler, Mr. Burton agreed to give Mr. Selker a license to produce and sell the USWA consumer products. Mr. Selker created a limited liability company, XL Sports, Ltd., to carry out his part of the transaction.[3]

The first step was completed in December 1996 when Mr. Lawler acquired and paid for Mr. Jarrett's interest in the USWA. Over the next six months, Mr. Lawler received $1,100,000 from Messrs. Burton and Selker. In a letter dated June 6, 1997, Messrs. Burton and Selker, through XL Sports, stated that they intended to pay Mr. Lawler the remaining $900,000 to complete the purchase within one week. On June 20, 1997, Mr. Lawler executed a notarized bill of sale transferring all of the USWA's assets to XL Sports.

At this point, the transaction stalled. In November 1997, XL Sports filed a Chapter 11 petition in the United States Bankruptcy Court for the Western District of Tennessee. Within days, XL Sports, acting as a debtor-in-possession, also filed an adversary proceeding against Mr. Lawler in the bankruptcy court to set aside the transfer of the USWA from Mr. Lawler to XL Sports. In addition to this adversary proceeding, XL Sports filed a separate lawsuit against Messrs. Burton, Lawler, and others seeking damages and equitable relief under the Racketeer Influenced and Corrupt Organizations Act.

XL Sports's lawsuits triggered two additional lawsuits in the United States District Court for the Western District of Tennessee. In the first, Mr. Burton sued Mr. Selker, Mr. Selker's father, and the Selkers' law firm. In the second, Mr. Lawyer sought damages from Messrs. Burton and Selker, the Selkers' law firm, and the other partner in the Selkers' law firm. Numerous counterclaims and cross-claims followed. Eventually XL Sports's separate lawsuit, Mr. Burton's lawsuit, and Mr. Lawler's lawsuit were consolidated and transferred to the United States District Court for the Northern District of Ohio for trial.

A jury in Cleveland, Ohio eventually returned a verdict on which judgment was entered. The jury determined that Mr. Burton and another person had engaged in racketeering and awarded XL

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[1] In one of the two appeals to the United States Court of Appeals for the Sixth Circuit, a panel accurately characterized the transaction as a "tangled course of dealings." *Burton v. Selker*, 30 Fed. App'x 456, 457, 2002 WL 252454, at *1 (6th Cir. Feb. 19, 2002).

[2] *Burton v. Selker*, 2002 WL 252454, at *1.

[3] *XL Sports, LTD. v. Lawler*, 49 Fed. App'x 13, 16, 2002 WL 31260355, at *2 (6th Cir. Oct. 8, 2002).

Sports treble damages in the amount of $2,595,000. The jury also determined that Mr. Burton was liable for fraud and conversion, and awarded XL Sports $235,000 in compensatory damages and $3,300,000 in punitive damages. The jury found in favor of Mr. Lawler with regard to all of XL Sports's claims against him. In addition, a District Court directed a $1,000,000 verdict for Mr. Lawler against Mr. Burton. The United States Court of Appeals for the Sixth Circuit upheld all these judgments. *Burton v. Selker*, 30 Fed. App'x at 457-58, 2002 WL 252454, at *2.

Within weeks after the entry of the judgment in the Cleveland cases, XL Sports returned to the adversary proceeding pending in the bankruptcy court in Memphis to assert that it had prevailed in the Cleveland litigation and that Mr. Lawler should be ordered to return $1,100,000 to the bankruptcy estate. Mr. Lawler responded with a motion for judgment on the pleadings, asserting that XL Sports's claims were barred by the judgments entered in Cleveland. The bankruptcy court denied both motions.

Apparently in response to comments made by the bankruptcy judge, XL Sports filed another suit against Mr. Lawler in the Chancery Court for Shelby County seeking to impose a constructive trust on the money that had been paid to Mr. Lawler to purchase the USWA.[4] Mr. Lawler removed this lawsuit to the United States District Court for the Western District of Tennessee where it was eventually consolidated with the adversary proceeding that was still pending in the bankruptcy court. Thereafter, the District Court granted a summary judgment dismissing all of XL Sports's claims against Mr. Lawler on res judicata grounds. In October 2002, the United States Circuit Court for the Sixth Circuit handed down an opinion concluding that XL Sports's chancery court suit against Mr. Lawler was not removable but that the District Court properly dismissed XL Sports's claims against Mr. Lawler that derived from the adversary proceeding in the bankruptcy court.[5]

Following the Circuit Court's remand, the case returned to the Chancery Court for Shelby County. Mr. Lawler moved to dismiss XL Sports's complaint seeking a constructive trust on the grounds of res judicata and collateral estoppel. In response, XL Sports changed its theory of the case and, characterizing itself as a debtor in bankruptcy, as opposed to a debtor-in-possession, sought an order requiring Mr. Lawler, as "constructive trustee," to turn over $1,060,000 plus interest to XL Sports. It also filed a response to Mr. Lawler's motion to dismiss, as well as a motion for a summary judgment on its constructive trust claim.

On January 3, 2003, the chancery court entered an order denying Mr. Lawler's motion to dismiss and granting Mr. Lawler permission to pursue an interlocutory appeal. This court denied Mr. Lawler's application for an interlocutory appeal on March 18, 2003. The Tennessee Supreme Court declined to review this decision on September 2, 2003. Thereafter, Mr. Lawler filed his response to XL Sports's summary judgment motion. The trial court granted XL Sports's summary judgment motion on February 25, 2004, and later, on March 24, 2005, denied Mr. Lawler's motion to alter or amend. Mr. Lawler perfected an appeal of right to this court.

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[4] *XL Sports, LTD. v. Lawler*, 49 Fed. App'x at 17, 2002 WL 31260355, at *3.

[5] *XL Sports, LTD. v. Lawler*, 49 Fed. App'x at 20 & 23, 2002 WL 31260355, at *6 & 9.

While the appeal was pending before this court, XL Sports initiated discovery to identify and trace the funds that remained from the approximately $1,000,000 paid to Mr. Lawler to purchase the USWA. On April 14, 2005, XL Sports filed a contempt petition against Mr. Lawler for allegedly violating an order entered on March 24, 2005 directing Mr. Lawler to deliver $392,500 to the clerk and master. XL Sports filed a second contempt petition on July 1, 2005, asserting that Mr. Lawler had still not complied with the March 24, 2005 order, that Mr. Lawler had refused to honor a subpoena duces tecum served upon him on April 20, 2005, and that Mr. Lawler had filed a false affidavit with the court.

The parties were able to reach a settlement that obviated the need for the hearing on the contempt petitions that had been set for August 10, 2005. On August 17, 2005, the trial court entered a "Consent Order on Petition to Hold Respondent in Contempt" approving the parties' settlement "conditional[ly] on Jerry Lawler's full (100% not 99%) compliance with the mandate to produce documents stated above . . . [in] this order . . .." The order stated that if Mr. Lawler complied, "the Contempt Petition, including the claims of criminal contempt, [would be] dismissed." The order also stated that "should Jerry Lawler fail to deliver the documents . . ., the Contempt Petition, inclusive of the claims that Jerry Lawler be held in criminal contempt for filing a false affidavit and for providing perjurious testimony in a post-trial deposition in aid of execution of this Court's March 24, 2005 order, will be rescheduled for trial . . .."

Although Mr. Lawyer turned over a significant number of documents following the entry of the August 17, 2005 order, XL Sports believed that many of these documents were superfluous and that Mr. Lawler had wilfully failed to produce documents that he had agreed to provide. Accordingly, the trial court set a new hearing on the contempt petitions for January 4, 2006. On January 3, 2006, Mr. Lawler produced additional documents, but it is unclear how many or which documents had still not been provided.

After hearing opening arguments on January 4, 2006, the trial court stated:

> [Mr. Lawler] is the architect of basically this train wreck. Well, let's call it a car wreck. That we have this consent Order that perhaps he, in retrospect, can providentially enter into, but, nevertheless, one upon which the plaintiffs detrimentally relied. They gave substantially extra time. They did file their contempt Petition earlier, but they exercised forbearance in pursuing it in reliance on this consent Order. That Mr. Lawler is the architect of the car wreck in this sense. That even though he got what he says he got, and I don't doubt you, counsel, about this '96 income return last night.
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> But that's the equivalent of someone who's driving down the road, who went to change the dial on the radio. They didn't mean to run the red light, but they did run the red light and somebody got hurt. And somebody has got to pay for somebody getting hurt.

> And so, why shouldn't he have to pay the attorney's fees for these folks that did what they were supposed to do, when they were supposed to, the way they were supposed to, in terms of the consent Order? But on something rather significant such as this amount of money that we just dealt with because when he says, I spent $100,000 with the IRS approximately. And they say, fine, show me in some fashion. And it's only at this late hour that we get some of that proof. So tell me why the Court shouldn't go ahead and dispose of this matter in that fashion? And frankly, if there's no good reason for the Court not to dispose in that fashion, the Court is also amenable to the notion of terminating these proceedings at this point and not having to try the criminal contempt matter. But if it's satisfactory to everybody, then we'll have a full blown trial right now. So let's take a brief recess and let the lawyers think about what I've said here . . ..
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> So that's the question that I want to put to y'all is: Why would it be inappropriate for the Court to go ahead and do this, and at the same time, if that's amenable to everyone, then frankly, it's amenable to the Court, to short circuit this thing to not have to deal with the criminal contempt.
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> Now if that's not amenable . . . then that's fine. Then we'll just try the criminal contempt. We'll try what's left of the civil contempt. We'll try the criminal contempt first . . ..

With the trial court's words ringing in their ears, the parties negotiated another compromise during the recess and then requested a conference with the trial court in chambers. During this conference, the parties informed the trial court that they had agreed that Mr. Lawler would pay the reasonable attorney's fees XL Sports had incurred with regard to the contempt proceedings and that they would leave it to the court to determine whether the amount of the requested fees was reasonable. Thereafter, XL Sports's lawyer submitted an affidavit stating that his fees connected with the contempt proceedings were $34,813. On January 24, 2006, the trial court entered an order directing Mr. Lawyer to pay $34,813 directly to XL Sports's lawyer.

This no-holds-barred money match did not end with the entry of the January 24, 2006 order. Two events that occurred on January 26, 2006 left the outcome in doubt. First, Mr. Lawyer filed an objection to the January 24, 2006 order, insisting that the award of $34,813 for legal expenses connected with the contempt petitions was unreasonable and demanding a hearing on the reasonableness of the claimed fees. Second, this court handed down its opinion reversing XL Sports's summary judgment and directing that XL Sports's constructive trust claim be dismissed

with prejudice.[6] This court's opinion prompted Mr. Lawler to file a motion on February 16, 2006, requesting that XL Sports's contempt petitions and requests for attorney's fees be dismissed. On March 3, 2006, the trial court entered an order stating that the "proceedings were terminated" as a result of the in-chambers conference and agreement on January 4, 2006 and directing Mr. Lawler to pay $44,982.96 directly to XL Sports's lawyer.[7]

Mr. Lawler raises two issues on this appeal. First, he contends that a debtor in bankruptcy has the same judicial standing as a debtor in possession. Second, he contends that the January 4, 2006 consent agreement that resolved the contempt proceeding and the March 3, 2006 order effectuating that agreement became a nullity after this court vacated XL Sports's summary judgment and dismissed its complaint. We conclude that the consent agreement and the March 3, 2006 order effectuating it, which was written in response to Mr. Lawler's objections, constitute separate actions that remain valid and binding.

II.

Mr. Lawler seeks to avoid being required to pay $44,982.96, XL Sports' legal fees and expenses related to the contempt proceedings, based upon an argument that turns on questions of law. Appellate courts review a trial court's resolution of legal issues without a presumption of correctness and reach their own independent conclusions regarding these issues. *Johnson v. Johnson*, 37 S.W.3d 892, 894 (Tenn. 2001); *Nutt v. Champion Int'l Corp.*, 980 S.W.2d 365, 367 (Tenn. 1998); *Cumberland Bank v. G & S Implement Co., Inc.*, 211 S.W.3d 223, 228 (Tenn. Ct. App. 2006). Accordingly, we review the trial court's decision de novo.

III.

The first issue raised by Mr. Lawler on appeal is "[w]hether an entity known as the *debtor in bankruptcy* has the same judicial standing as a *debtor in possession*." Mr. Lawler contends that there is no distinction for purposes of standing to bring suit between the two. Accordingly, because XL Sports had an opportunity as a debtor in possession to bring its constructive trust action during the earlier federal court proceedings, but elected not to do, it cannot simply claim to be a different entity – a debtor in bankruptcy – for purposes of bringing its constructive trust claim. Therefore, Mr. Lawler argues that XL Sports "as a *debtor* is the Debtor in Bankruptcy and the Debtor in Possession and as such must suffer the consequences of *res judicata* and *collateral estoppel*." This argument relates to the ability of XL Sports to bring the constructive trust action against the res of approximately one million dollars and Mr. Lawler. This court has already resolved that question definitively in Mr. Lawler's favor in its *XL Sports, Ltd. v. $1,060,000 Plus Interest Traceable to Respondent* decision. This argument, however, has no significance to resolving this appeal separate from the weight of that determination, which we next consider.

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[6] *XL Sports, Ltd. v. $1,060,000 Plus Interest Traceable to Respondent*, No. W2005-00689-COA-R3-CV, 2006 WL 197103, at *13 (Tenn. Ct. App. Jan. 26, 2006), *perm app. denied* (Tenn. Aug. 28, 2006).

[7] On February 1, 2006, XL Sports's lawyer filed a supplemental affidavit stating that XL Sports had incurred additional fees relating to the contempt proceedings against Mr. Lawler.

IV.

For his second issue, Mr. Lawler insists that the trial court issued a "moot fee order" on March 3, 2006 because the order was inconsistent with this court's January 26, 2006 opinion that dismissed XL Sports's suit. He argues that the parties' January 4, 2006 agreement and the January 24, 2006 order memorializing that agreement were invalidated when the underlying suit from which the contempt action sprung was dismissed. Mr. Lawler is mistaken. The contempt proceeding was separate from the underlying proceeding, and thus, the parties' January 4, 2006 agreement and the January 24, 2006 and March 3, 2006 orders implementing it survived the dismissal of XL Sports's underlying constructive trust action.

Civil contempt proceedings may serve two purposes. They may be coercive in order to aid in the enforcement of compliance with a court's order. They may also be compensatory in order to provide relief to a party who has suffered unnecessarily as a result of contemptuous conduct. *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 511 (Tenn. 2005); *see also Consol. Rail Corp. v. Yashinsky*, 170 F.3d 591, 595-96 (6th Cir. 1999); *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961-62 (5th Cir. 1995). Distinguishing between these two purposes becomes significant in cases like this one because coercive civil contempt orders terminate with the end of the underlying proceeding out of which they grew, *Travelhost, Inc. v. Blandford*, 68 F.3d at 962; *U.S. v. Slaughter*, 900 F.2d 1119, 1125-26 (7th Cir. 1990), while compensatory civil contempt orders are not rendered moot by the termination of the underlying action. *Consol. Rail Corp. v. Yashinsky*, 170 F.3d at 596; *Travelhost, Inc. v. Blandford*, 68 F.3d at 962.

The distinction between the longevity of coercive civil contempt orders and compensatory civil contempt orders "rests upon the fact that the harm or injury that gives rise to the need for compensation continues unredressed at the end of the underlying litigation while the need for getting a party to act in the underlying litigation necessarily terminates when that litigation ends." *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d 392, 400 (5th Cir. 1987); *see also In re Gen. Motors Corp.*, 61 F.3d 256, 259 & n. 3 (4th Cir. 1995). A compensatory civil contempt order "reimburses the injured party for the losses and expenses incurred because of . . . [an] adversary's non-compliance. This includes losses flowing from noncompliance and expenses reasonably and necessarily incurred in the attempt to enforce compliance." *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir. 1976). Thus, where attorney's fees are awarded for such purposes, they have been found to be clearly in the compensatory rather than coercive category. *Travelhost, Inc. v. Blandford*, 68 F.3d at 962; *In re Musslewhite*, 270 B.R. 72, 79 (S.D. Tex. 2000). Accordingly, a compensatory award for attorneys' fees and legal expenses survives the termination of the underlying claim.

As a general matter, however, the enforceability of a compensatory civil contempt order depends on the continuing validity of the underlying order that the contemner has disobeyed. A judgment of civil contempt stands or falls on the validity or invalidity of that order. *Lewis v. S. S. Baune*, 534 F.2d 1115, 1119 (5th Cir. 1976) (citing *U.S. v. United Mine Workers of Am.*, 330 U.S. 258, 295, 67 S. Ct. 677, 696 (1947); *Norman Bridge Drug Co. v. Banner*, 529 F.2d at 828). If a party is not entitled to the relief provided in the underlying order, it is not entitled to remedial measures to force compliance with that order or to compensate it for violations of that order.

Wagner v. Bd. of Educ. of Montgomery County, Md., 340 F. Supp. 2d 603, 620-21 (D. Md. 2004); *see also McLean v. Cent. States, Se. and Sw. Areas Pension Fund*, 762 F.2d 1204, 1210 (4th Cir. 1985). Accordingly, a claim for civil contempt must fail if the order that was disobeyed is subsequently reversed by the court that issued it or by an appellate court or if the issuance of the order exceeded the power of the issuing court. *In re Keene Corp.*, 168 B.R. 285, 291 (Bankr. S.D. N.Y. 1994).

Mr. Lawler cannot take advantage of this limitation on the enforceability of compensatory civil contempt orders because his obligation to pay $44,982.96 in attorney's fees for his contemptuous conduct does not arise from an invalid order. Rather, it arises from his voluntary agreement, made following arms-length negotiations, to compensate XL Sports for the legal expenses it incurred as a result of his contemptuous conduct. This agreement was formally confirmed by the trial court in its January 24, 2006 order.

Mr. Lawler has not argued on appeal that either the January 24, 2006 order or the March 3, 2006 order failed to stay within the confines of the parties' January 4, 2006 agreement because the amount of attorney's fees approved in these orders was unreasonable. He simply contends that the amount of attorney's fees was not finalized until one month after this court's dismissal of XL Sports's claim and, therefore, that this court's dismissal of XL Sports's action mooted the contempt proceeding and along with it, the consent agreement and its effectuating order. These arguments are unavailing because the contempt proceeding was separate from the underlying constructive trust proceeding. *See e.g.*, *Consol. Rail Corp. v. Yashinsky*, 170 F.3d at 595-97; *Travelhost, Inc. v. Blandford*, 68 F.3d at 961-62; *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d at 400; *Shady Records, Inc. v. Source Enters., Inc.*, 371 F. Supp.2d 394, 398-99 (S.D.N.Y. 2005); *In re Musslewhite*, 270 B.R. at 78-79; *In re Keene Corp.*, 168 B.R. at 288-91. Thus, the termination of the underlying constructive trust proceeding did not terminate the civil contempt proceedings whose purpose was to compensate XL Sports for Mr. Lawler's contemptuous conduct.

V.

The trial court's March 3, 3006 order directs Mr. Lawler to pay $44,982.96 directly to XL Sports's attorney. The attorney, of course, is not a party to the proceeding. It is XL Sports, the client, not the attorney that incurred the costs resulting from Mr. Lawler's contemptuous conduct. Thus, the award of $44,982.96 in attorney's fees and expenses should be paid directly to the client, XL Sports. The lawyer must look to his client for the payment of his fee. With this modification, we affirm the March 3, 2006 order directing Mr. Lawler to pay XL Sports $44,982.96. We remand the case with directions to the trial court to modify its judgment in accordance with this opinion and for whatever other proceedings consistent with this opinion may be required. We tax the costs of this appeal to Jerry Lawler and his surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.